

STATE OF MICHIGAN
COURT OF APPEALS

DAVID E. CARMODY,

Plaintiff-Appellee,

v

LUCE COUNTY ROAD COMMISSIONERS,

Defendant-Appellant,

PETER GRIEVES and MARK A. DESOTELL,

Defendants.

UNPUBLISHED

June 11, 2002

No. 232160

Luce Circuit Court

LC No. 98-002729-NO

Before: Griffin, P.J., and Hood and Sawyer, JJ.

MEMORANDUM.

Defendant appeals as of right from a judgment in favor of plaintiff for wrongful employment termination in violation of the Whistleblower's Protection Act (WPA), MCL 15.361 *et seq.* We affirm.

This case arose when plaintiff was fired after notifying state and county authorities that he believed that defendant engaged in improper and illegal activities, including using federally funded gravel on unauthorized local projects and holding meetings in violation of the Open Meetings Act, MCL 15.261 *et seq.* Defendant asserted that plaintiff's inability to work with engineer-manager Mark Desotell¹ was the reason for his termination.

Defendant alleges that the trial court improperly denied its motion for summary disposition because plaintiff admitted that his motivation for reporting defendant's activities was to obtain job security, rather than to inform the public. We disagree. Our review of this issue is *de novo*. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). Summary disposition is rarely appropriate where motive and intent are at issue or where a witness or deponent's credibility is crucial. *Vanguard Ins Co v Bolt*, 204 Mich App 271, 276; 514 NW2d 525 (1994). In light of plaintiff's varied responses, the question of plaintiff's motivation, informing the public or personal vindictiveness, was properly submitted to the jury. *Id.*

¹ Desotell and Peter Grievess were named defendants, but were dismissed from the litigation prior to trial. They are not parties to this appeal.

Defendant next alleges that the trial court's jury instructions and verdict form applied an incorrect standard for plaintiff's burden of proof with respect to causation. We disagree. Our review of claims of instructional error is de novo. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). We examine the jury instructions as a whole to determine whether there is error requiring reversal and reverse only where the failure to do so would be inconsistent with substantial justice. *Id.* The jury instruction drafted by the trial court appropriately delineated the burden of proof. See *Luidens v 63rd Dist Court*, 219 Mich App 24, 27-28; 555 NW2d 709 (1996). At the time of trial, the WPA had no standard jury instruction. However, the trial court based its instruction on SJI2d 105.04. The *Luidens* Court concluded that this instruction correctly delineated the law regarding the burden of proof.

Affirmed.

/s/ Richard Allen Griffin
/s/ Harold Hood
/s/ David H. Sawyer